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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

BOARD OF TRUSTEES OF THE U.A. LOCAL NO. 355 HEALTH AND WELFARE TRUST FUND; BOARD OF TRUSTEES OF THE U.A. LOCAL NOS. 343 AND 355 DEFINED CONTRIBUTION PLAN; BOARD OF TRUSTEES OF THE NORTHERN CALIFORNIA/NORTHERN NEVADA UTILITY JOURNEYMAN AND APPRENTICE TRAINING TRUST FUND; AND BOARD OF TRUSTEES OF THE U.A. LOCAL NO. 355 LABOR-MANAGEMENT COOPERATION COMMITTEE TRUST FUND,)	No. CV 08 2122 SC
)	
	)	MEMORANDUM OF POINTS AND
	)	AUTHORITIES IN SUPPORT OF
	)	MOTION FOR DEFAULT JUDGMENT
	)	<u>BY COURT</u>
)	
	)	(F. R. C. P. 55(b) (2) ,
	)	L.R. 230)
)	
	)	Date: October 3, 2008
	)	Time: 10:00 a.m.
Plaintiffs,	)	Place: Courtroom 1,
	)	17th Floor
v.)	
)	
IMAGE LANDSCAPING, INC.)	
)	
Defendant.)	
)	
)	

I.

INTRODUCTION

The Clerk of the Court entered default against the defendant under F.R.C.P. 55(a) on August 5, 2008. Plaintiffs now move the Court to dispose of this matter expeditiously by granting a judgment by default.

II.

**DEFENDANT'S FAILURE TO COMPLY WITH THE FEDERAL RULES
OF CIVIL PROCEDURE JUSTIFIES ENTRY OF A
DEFAULT JUDGMENT**

F.R.C.P. 55(b)(2) provides that judgment by default may be entered by the Court. Entry of default judgment on a liability issue is justified where a defendant fails to comply with the pretrial orders and rules of civil procedure. *Gulf Oil Co. V. Bill's Farm Center, Inc.*, 449 F.2d 778 (8th Cir. 1971). Defendant has failed to answer the complaint with the time period provided by law such that a default has been properly entered and consequently defendant is deemed to have admitted to the allegations in that complaint.

The fringe benefit contributions, liquidated damages, interest at the Plan rate, court costs and attorneys' fees requested in the action against defendant Likeness Mechanical, Inc., are mandated by 29 U.S.C. §1132(g)(2). See also, *Kemmis v. McGoldrick*, 706 F.2d 993, 997-998 (9th Cir. 1983); *Operating Engineers Pension Trust v. Reed*, 726 F.2d 513, 514 (9th Cir. 1984); *Northwest Administrators, Inc., v. Albertson's Inc.*, 104 F.3d 253 (9th Cir. 1996).

The Court should, therefore, enter a judgment by default against defendant as requested herein.

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III.

For the reason stated above, the Court should enter a judgment by default on the merits of this court.

Dated: August 27, 2008